

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

BRETT ELLIOTT,

Plaintiff,

v.

**SHERIFF DANIEL STATON, CHIEF
DEPUTY TIM MOORE, CAPTAIN
MONTE RESIER, BOB SKIPPER,
CAPTAIN CAROL HASLER, JOHN DOES
#1-10,** Multnomah County Sheriff Department
employees, and **MULTNOMAH COUNTY,**
by and through the Multnomah County
Sheriff's Office, a political subdivision of the
State of Oregon,

Defendants.

Case No.: 3:11-cv-01536-ST

**OPINION AND ORDER ADOPTING
FINDINGS AND RECOMMENDATIONS**

Michelle R. Burrows and Sara K. Staggs, Michelle R. Burrows, PC, 618 NW Glisan, Ste. 203, Portland, OR 97209. Attorneys for Plaintiff.

Jenny M. Morf, County Attorney, and Katharine von Ter Stegge, Assistant County Attorney, Office of the Multnomah County Attorney, 501 SE Hawthorne Blvd., Ste. 500, Portland, OR 97214. Attorneys for Defendants.

SIMON, District Judge.

On April 20, 2012, Magistrate Judge Janice Stewart filed Findings and Recommendations in this case. Dkt. 25. Judge Stewart recommended that Defendants' Motion to Dismiss, Dkt. 14, should be granted in part and denied in part. No party has filed objections.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a

de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Stewart’s findings and recommendations for clear error on the face of the record. No such error is apparent. Accordingly, the court **ADOPTS** Magistrate Judge Stewart’s Findings and Recommendation, Dkt. 25.

IT IS SO ORDERED.

Dated this 25th day of June, 2012.

/s/ Michael H. Simon

Michael H. Simon
United States District Judge